

## Another Federal NIL Bill on the Horizon: Analyzing the Draft College Athlete Protection and Compensation Act

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A trio of senators have joined the list of federal lawmakers circulating drafts of federal college name, image, and likeness (NIL) bills. This time, Sens. Richard Blumenthal (D-CT), Jerry Moran (R-KS), and Cory Booker (D-NJ) are joining across party lines to create the College Athlete Protection and Compensation Act. We'll refer to it as the "CAPC Act" (mainly because nobody wants to read "College Athlete Protection and Compensation Act" over and over). [As discussed in previous posts](#), NIL rules and laws are currently a unique blend of NCAA rules and varying state laws, which many within the NCAA and college athletics believe to be problematic. While not the first federal NIL bill released or introduced this legislative session, and likely not the last, the CAPC Act signals some bipartisan support for federally standardized NIL regulation.

The CAPC Act formalizes federal NIL rights, establishes an NIL clearinghouse, and offers protections for student-athlete scholarships and medical expenses. The bill broadly prohibits schools, conferences, and athletic associations from punishing or prohibiting a student-athlete from earning money from the use of their NIL. Uniquely, the bill would allow schools to prohibit college athletes from entering NIL contracts that are contradictory to the school's code of conduct or for moral reasons. As with all NIL-related rules and laws, the bill also contains a restriction on pay-for-play NIL deals by prohibiting NIL compensation from being used as an inducement for recruits or retention of current players.

Under the CAPC Act, schools cannot engage in representing college athletes in endorsement contracts, regulate their representation, certify individuals for such representation, or influence the choice of representation for college athletes. However, schools may allow third parties to use the school's intellectual property in endorsement contracts, but the school must not be involved in determining the amount of compensation provided to the college athlete.

Similar to the other federal bill drafts, the CAPC Act also contains a reporting requirement. College athletes would be required to provide a copy of each endorsement contract to the school within seven days after entering the contract. Additionally, recruits would be required to provide all current and expired NIL contracts to a school before signing a letter of intent with that school. The contents of the disclosed NIL contracts and financial information provided to the schools would not be subject to

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public disclosure or open-records laws. However, in an attempt to provide transparency regarding the NIL value of student-athletes, schools would be required to submit annual reports of NIL deals, including information about average and total value, which would then be used for a national public database.

The bill also contains several provisions aimed at protecting college athletes from potentially exploitative or unfair NIL deals or agent representation. For example, college athletes who are no longer participating in college athletic competitions would be able to cancel NIL contracts with more than one year remaining without liability for breach and without returning previously earned payments.

In addition, the bill establishes the College Athletics Corporation (CAC), which would serve as a clearinghouse for NIL contracts and provide guidance to safeguard the interests of student-athletes. The CAC would be responsible for enforcing rules, investigating violations, certifying agents, and certifying endorsement contracts for college athletes. As proposed, the CAC would be comprised of 15 voting members, including current and former college athletes, school representatives, NCAA representatives, athletic conference administrators, and professionals with expertise in sports marketing, contracting, and public relations.

The CAC would have express authority to establish rules and investigatory processes to enforce the CAPC Act. It would also be authorized to bring actions to enforce the CAPC Act with respect to agents, schools, conferences, and the NCAA for violations of the act or CAC rules. The NCAA would be granted authority to enforce the CAPC Act and the standards established by the CAC. This includes the power to declare college athletes ineligible, withhold one or more revenue distributions from schools that breach NIL rules, and suspend or remove from involvement any athletic personnel who violate the NIL regulations. Notably, the CAC would also have subpoena power enabling it to gather necessary evidence, conduct investigations, and take appropriate actions against entities or individuals that may have violated the act or its established rules and standards. The ability to subpoena documents and testimony could have significant implications on the CAC's ability to enforce NIL rules, especially in contrast to the current status quo where, to date, the NCAA has only issued one NIL infraction-related ruling.

Additionally, the bill would expressly preempt state NIL laws. One noticeable absence in the bill is any provision regarding the employee status of student-athletes, an issue that is currently before the U.S. Court of Appeals for the Third Circuit and the subject of a National Labor Relations Board complaint in California.

The bill does contain several non-NIL related provisions. For example, under the bill, schools would be required to honor scholarships of college athletes until they complete their undergraduate degree. Former college athletes who had received scholarships while enrolled but did not complete their undergraduate degree due to pursuing a career in professional sports would continue to receive grants-in-aid to cover tuition, books, and fees. However, schools would still be able to revoke scholarships for reasons such as transferring to another school or not meeting academic or conduct standards. Additionally, the bill would permit college athletes to enter a professional sports draft and retain eligibility if they do not receive compensation from a professional sports league, team, or agent and declare their intent to resume college athletic competition within seven days after the draft's completion. The bill would require schools making in excess of \$20 million in athletic revenue to cover medical expenses for student-athletes for at least two years after their final competition. And schools making \$50 million or more would be required to cover medical expenses for student-athletes for at least four years after their final competition. The bill would also require the CAC to establish a

medical trust fund for college athletes, and schools making \$50 million or more in athletic revenue would be required to contribute to the fund annually. The purpose of this trust fund is to provide financial support and coverage for medical expenses related to injuries and health conditions incurred during the student-athlete's participation in intercollegiate athletics.

For the CAPC Act to have a chance of being passed during this legislative session, it must be introduced soon. With an upcoming election cycle on the horizon, the prospects for the bill to make significant progress in the coming years are slim. However, the approach to standardizing NIL regulations without making sweeping changes and bipartisan support may improve the chances for this bill as compared to other federal NIL bills that have been circulating. In particular, as an increasing number of state laws continue to lift NIL restrictions, the pressure on the NCAA to establish national NIL standards is mounting. Thus, the attempt to address the issue of varying NIL rules and laws across states could position the CAPC Act as a potential solution to the ongoing debate surrounding college athlete compensation. As the discussions evolve, it will be crucial for lawmakers, the NCAA, and other stakeholders to work together to find a balanced and fair resolution that benefits college athletes while also addressing the concerns of educational institutions and the broader sports community.

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